

J. BERNARD ROBERTS

IBLA 75-530

Decided July 30, 1975

Appeal from decision A-9020, dated April 11, 1975, of the Arizona State Office, Bureau of Land Management, declaring the Black and White placer mining claim null and void ab initio.

Dismissed.

1. Rules of Practice: Appeals: Statement of Reasons

An appeal is subject to summary dismissal where a statement of reasons is not timely filed. A statement of reasons in support of an appeal which does not point affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

2. Mining Claims: Surface Uses

If a mining claim is located on or after July 23, 1955, it is subject, prior to the issuance of patent, to the right of the United States to manage surface resources or the surface to the extent necessary for access to adjacent land. 30 U.S.C. § 612 (1970).

APPEARANCES: J. Bernard Roberts, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

J. Bernard Roberts has appealed from a decision of the Arizona State Office, Bureau of Land Management, dated April 11, 1975, declaring the Black and White placer mining claim null and void ab initio. The decision recited that the land involved was withdrawn for reclamation purposes for the Colorado River Storage Project by

Secretarial Order of March 14, 1929, at which time it was segregated from all forms of appropriation under the public land laws, including location and entry under the general mining laws. The Black and White claim was located on February 15, 1933.

[1] Appellant filed his notice of appeal on May 13, 1975. Inasmuch as the notice was not accompanied with a statement of reasons, appellant was required to furnish such a statement within 30 days, *i.e.*, on or before June 13, 1975. 43 CFR 4.412. Appellant did not file a statement of reasons until July 1, 1975. Therefore, the appeal is subject to dismissal for that reason alone. 43 CFR 4.402. Appellant has not tendered any explanation of his failure to file timely. However, the appeal will be dismissed for additional reasons.

In his late-filed statement of reasons appellant remarked that he was aware of the withdrawal but had given it little thought, because the location, elevation, and general outlay of the 20 acres made it appear impossible that the land could be used for reclamation purposes. He further stated that he was attempting to locate a homestead on this as well as additional lands but elected to locate a mining claim instead because of the obstacles to homestead entry. Appellant also indicated that since he has held the Black and White claim for over 40 years without being disturbed in possession he believes he is entitled to a patent covering the claim.

The State Office correctly held that the land covered by the Black and White placer claim was closed to entry in 1929 and that any mining claim located thereon during the period of withdrawal was null and void ab initio. Appellant points to no error in that decision. Rather, his statements show complete awareness that the claim, when located, was on land not open to location. In effect, appellant's statement of reasons is a petition for relief.

It is the long-standing rule of the Department that a purported statement of reasons which does not point affirmatively in what respect the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons was filed and the appeal may be dismissed. United States v. Maus, 6 IBLA 164 (1972); United States v. Heyser, 75 I.D. 14 (1968); 43 CFR 4.412. In the instant case appellant not only failed to point to error but conceded that the decision below is premised on correct facts of which he was aware when making his original location.

[2] The Black and White mining claim was void when located. However, the land in issue was open to location from January 13, 1955, to December 13, 1962. A location could have been effected

while the land was open. If appellant made a location on or after July 23, 1955, during the period the land was open, the location, necessarily, would be subject to the terms and provisions of the Act of July 23, 1955, 30 U.S.C. §§ 601-615 (1970). Under that Act the Government is authorized (prior to patent) to manage the surface resources and to permit surface use for access to adjacent land. 30 U.S.C. § 612 (1970). In this connection, we note that permits A-3756 and A-7316 for free use of materials and other surface uses have issued to the Bureau of Reclamation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

